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09/441,204	11/16/1999	DAVID VERCHERE	56490.000002	3995

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EXAMINER

POND, ROBERT M

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3625

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/441,204
Filing Date: November 16, 1999
Appellant(s): VERCHERE, DAVID

Yisun Song, Reg. #44,487
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10 January 2005.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 10 and 20-36 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

6,141,653 CONKLIN et al. 10-2000

Paper #22: Promomart: www.promomart.com; Internet Archive Wayback Machine, www.archive.org; 16 January 1998, 23pgs.

Paper #22: Busch, Melanie; "Companies Spin Own Web Sites with Intranets," Tulsa World, 25 August 1996, Proquest #17333510, 4pgs.

Paper #22: Business Wire; "911gifts.com Expands Features, Service and Merchandise to Rescue Holiday Shoppers," 16 November 1998, Proquest #36002299, 3pgs.

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 10 and 20-36 are rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on 10 August 2004.

(11) Response to Argument

Pertaining to Rejection under 35 USC 101

Claims 10 and 20-36 were presented to the Business Methods 101 review panel on 04 August 2004. Recommendations were made to reject claims 21-36 under 35 USC 101 for lacking a practical application in the technological arts. As claimed, traditional manual methods or trivial use of technology of processing branded promotional products read on the claims. The terms module, interface, and database have manual equivalents in business methods: an interface

bridges one form of information or communication to another form (e.g. products viewable on shelves in a warehouse to a paper catalog for consumer viewing); a module (e.g. separate delineated section of a paper catalog); a database (e.g. card file or paper folder containing information about a customer).

Pertaining to Rejection under 35 USC 103(a)

Appellant: Conklin Fails to Disclose a Multi-Level Network with Multiple Entry Points.

Conklin teaches a Web-based online community comprising participants, buyers and sellers, having similar commerce interests. Conklin teaches examples of online communities that demonstrate the versatility of the sponsored community including, but not limited to: buyers and sellers engaged in production purchasing; stock trading; or agricultural buying and selling (please see at least abstract; Fig. 1a (02, 04, 06, 08a-08h); Fig. 1j; Fig. 6 (515); Fig. 3; col. 13, line 65 through col. 15, line 33; col. 17, line 13 through col. 18, line 46; col. 28, line 37 through col. 30, line 30).

Conklin teaches multi-level networks: Public Internet, private intranets, and extranets used to extend a company's private intranet (please see col. 2, lines 3-11).

Conklin teaches multiple entry points: Conklin teaches entry points for sellers to create their web sites. A seller, meaning any entity engaged in selling- a reseller, a vendor, or supplier (please note: also known as a distributor) can create a discrete web presence and integrate the web presence into the online

community (please see at least Fig. 4a (214-02); Fig. 4b; Fig. 10-1; Fig. 10-2; Fig. 10-3; col. 14, lines 6-11; col. 27 through col. 28, line 36).

Iterative price negotiations: Conklin is further limiting regarding price. A published price presented by a seller not subject to bargaining is a "take it or leave it" position on the part of the seller. The buyer either accepts the price or looks elsewhere. Conklin teaches listing prices on web sites (see at least col. 3, lines 1-3). Conklin teaches initial price and terms, negotiations, and accepting a price.

Seller is a buyer: As applicable, the Examiner noted how a seller is also a buyer to another seller. This is not a new concept weighed in by the Examiner. Sellers of physical products are rarely self-sufficient. Sellers buy products and materials from other sellers.

Appellant-Independent Claims 10 and 20 are Patentable Over Conklin and the Promomart Website

As noted above, Conklin teaches multi-level networks and multiple entry points for resellers, vendors, or suppliers to showcase their products.

Promomart shows discrete entry points: Promomart teaches an online branded promotional products service connecting customers to resellers, vendors, distributors, and manufacturers selling branded promotional products (e.g. key chains, pens, pencils, banners, stress balls, etc.) with imprinted company logos or other advertising messages. Resellers, vendors, distributors, and manufacturers are electronically linked into the central Promomart web site.

Customers search for branded products and services, place orders in an electronic shopping cart submitted to the selected seller. Each electronic link on the Promomart web site is a discrete entry point.

Appellant-The Modifications of Conklin in view of the Promomart Website as Applied to Claims 10 and 20 is based purely on improper hindsight

The Examiner respectfully disagrees with the Appellant: Conklin teaches a Web-based online community comprising participants, buyers and sellers, having similar commerce interests. Conklin teaches examples of online communities that demonstrate the versatility of the sponsored community including, but not limited to: buyers and sellers engaged in production purchasing; stock trading; or agricultural buying and selling (please see at least abstract; Fig. 1a (02, 04, 06, 08a-08h); Fig. 1j; Fig. 6 (515); Fig. 3; col. 13, line 65 through col. 15, line 33; col. 17, line 13 through col. 18, line 46; col. 28, line 37 through col. 30, line 30). Promomart teaches a community of sellers showcased in an online site for the purpose of serving the branded promotional marketplace (please note: though not relied upon in the office action, the branded promotional products industry is well known to one of ordinary skill in the arts. Marketing organizations have been buying branded promotional products for their companies for a very long time). Given the suggestion of potential uses by Conklin, the Appellant is confusing hindsight reconstruction with creative uses for the Conklin invention. Conklin and Promomart in combination teach and/or suggest an online community of participants engaged in the buying and selling of branded promotional products.

Appellant: Independent Claims 21 and 26 are Patentable Over Conklin, the Promomart Website and the Busch Article

Busch: Busch was relied upon to teach and/or suggest a company logo store. As noted above, Conklin and Promomart in combination teach and/or suggest an online community of participants engaged in the buying and selling of branded promotional products and further teach and/or suggest multi-level networks, multiple entry points to showcase resellers, vendors, or distributors. The Examiner firmly believes that Busch at least provides a teaching pertinent to branded promotional products. The combination is proper.

Appellant-The Modifications of Conklin in view of the Promomart Website and the Busch article as Applied to Claims 21 and 26 is based purely on improper hindsight

The Examiner respectfully disagrees with the Appellant: For the reasons noted above, the Examiner believes the combination of Conklin and Promomart is proper. Busch teaches an online company logo store for employees. The Examiner firmly believes that Busch at least provides a teaching pertinent to branded promotional products. The combination and modification are proper.

Appellant- Dependent Claims 22-25 and 27-36 are each separately patentable over the combination of Conklin, Promomart, Busch, and Business Wire

The Examiner respectfully disagrees with the Appellant for the reasons noted above.

Appellant-Claims 22 is separately patentable

The Examiner respectfully disagrees with the Appellant: Conklin and Promomart teach email notification and a calendar feature to remind customers of recurring events applicable to purchasing branded promotional products. Business Wire teaches an online commerce site providing customers with a reminder-scheduling feature for recurring events. Business Wire at least provides a teaching pertinent to providing a customer convenience that more fully automates the reminder feature as taught or suggested by Conklin and Promomart.

Appellant-Claim 23 is separately patentable

The Examiner respectfully disagrees with the Appellant: The office action cited activity managed by the central site- processing purchase orders and tracking transactions which addresses back office activity (see at least col. 19, line 66 through col. 20, line 1).

Appellant-Claim 24 is separately patentable

The Examiner respectfully disagrees with the Appellant: The office action cited Conklin teaching a) web site activity reporting for sellers, b) monitoring activity (please note: Conklin's invention uses active linking (i.e. clicking on icons or hyper-text) to move from one web page to another which creates web hit activity that is monitored), c) saving history on all transactions for buyers and sellers, and d) archival processing (see at least col. 19, lines 28-37, 44-45; col. 30, lines 21-30, lines 32-51).

Appellant-Claim 25 is separately patentable

The Examiner respectfully disagrees with the Appellant: Conklin and Promomart teach sellers bidding on requests for proposals (RFP) posted by buyers (Conklin: see at least col. 20, lines 23-34).

Appellant-Claim 27 is separately patentable

The Examiner respectfully disagrees with the Appellant: Conklin and Promomart teach email notification for communications (Conklin: see at least col. 25, lines 60-65) and a calendar feature to remind customers of recurring events applicable to purchasing branded promotional products (U: Promomart: see page 19). Business Wire teaches an online commerce site providing customers with a reminder-scheduling feature for recurring events. Business Wire at least provides a teaching pertinent to providing a customer convenience that automates the reminder feature as taught or suggested by Conklin and Promomart.

Appellant-Claim 28 is separately patentable

The Examiner respectfully disagrees with the Appellant: Conklin and Promomart teach a shopping cart feature for purchasing a plurality of items and the buyer negotiating for a plurality of items (Conklin: see at least abstract; col. 2, line 62 through col. 3, line 13).

Appellant-Claim 29 is separately patentable

The Examiner respectfully disagrees with the Appellant: The office action cited Conklin teaching a) web site activity reporting for sellers, b) monitoring activity (please note: Conklin's invention uses active linking (i.e. clicking on icons

or hyper-text) to move from one web page to another which creates web hit activity that is monitored), c) saving history on all transactions for buyers and sellers, and d) archival processing (see at least col. 19, lines 28-37, 44-45; col. 30, lines 21-30, lines 32-51).

Appellant-Claim 30 is separately patentable

The Examiner respectfully disagrees with the Appellant: Conklin and Promomart teach sellers bidding on requests for proposals (RFP) posted by buyers (Conklin: see at least col. 20, lines 23-34).

Appellant-Claim 31 is separately patentable

The Examiner respectfully disagrees with the Appellant: Conklin teaches sellers, vendors, suppliers, and manufacturers. Promomart teaches sellers, vendors and distributors (Paper #22, U: see page 16).

Appellant-Claim 32 is separately patentable

The Examiner respectfully disagrees with the Appellant: The office action cited one of ordinary skill in the art as being able to ascertain an artwork library. Conklin and Promomart teach the storing of buyer information in files, and further teach imprinted company logo images being transmitted from the seller over the web site. As cited, one of ordinary skill in the art at time of the invention would ascertain the need for storing customer imprinting information.

Appellant-Claim 33 is separately patentable

The Examiner respectfully disagrees with the Appellant: The office action cited activity managed by the central site- processing purchase orders and

tracking transactions which addresses back office activity (see at least col. 19, line 66 through col. 20, line 1).

Appellant-Claim 34 is separately patentable

The Examiner respectfully disagrees with the Appellant: Conklin teaches sellers, vendors, suppliers, and manufacturers. Promomart teaches sellers, vendors and distributors (Paper #22, U: see page 16).

Appellant-Claim 35 is separately patentable

The Examiner respectfully disagrees with the Appellant: The office action cited one of ordinary skill in the art as being able to ascertain an artwork library. Conklin and Promomart teach the storing of buyer information in files, and further teach imprinted company logo images being transmitted from the seller over the web site. As cited, one of ordinary skill in the art at time of the invention would ascertain the need for storing customer imprinting information.

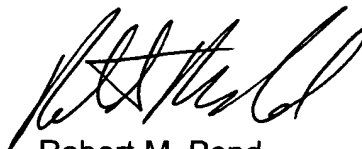
Appellant-Claim 36 is separately patentable

The Examiner respectfully disagrees with the Appellant: The office action cited activity managed by the central site- processing purchase orders and tracking transactions which addresses back office activity (see at least col. 19, line 66 through col. 20, line 1).

Art Unit: 3625

For the above reasons, it is believed that the rejections should be sustained.

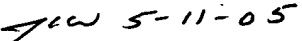
Respectfully submitted,



Robert M. Pond
Primary Examiner
May 11, 2005

Conferees

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